

Appl. No. 10/643,500
Amtd. dated June 27, 2007
Reply to O.A. dated March 27, 2007

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REMARKS/ARGUMENTS

STATUS OF THE CLAIMS. Claims 1-24 are pending in the above-captioned case, all of which stand rejected. Of those, claims 1, 4, 5, 12, and 17 are amended herein. In addition, upon our solicited entry of this amendment, please recognize that new claims 25 and 26 are pending as well.

AMENDMENTS. Claims 1 and 17 are amended by adding that the respective composition or shaving cream "has bubbles when dispensed." These amendments are supported in the specification at, for example, page 6.

Claim 1 is also amended to add a description of the proportion that the diluent occupies of the composition. This amendment is supported by the specification at page 5.

Claim 17 is also amended to increase its clarity by adding that the blend capable of producing CO₂ is from "about 4.6% to about 7.4% by weight of the shaving cream." This amendment is supported in the specification, as follows: Based on the recital at page 5 of the specification regarding the proportions of bicarbonate and acid included in the blend, and as stated at claim 1 as originally filed, the blend constitutes from about 58% to about 62% by weight of the diluent. Also at page 5 of the specification, applicants stated further that the diluent constitutes from about 8% to about 12% of the claimed composition. Accordingly, by multiplying the percentages, it follows that the blend constitutes in the range of about 4.6% to about 7.4% by weight of the claimed composition.

Claims 4, 5, and 12 are amended to increase clarity thereof by removing the unnecessary phrase "a blend of", which modifies certain chemicals that are included in the composition that is introduced in claim 1.

New claims 25 and 26 depend from claims 1 and 17, respectively, and recite that "upon dispensing, the composition has a greater number of bubbles relative to a second composition prepared according to U.S. Patent 5,902,225 issued to Monson. Support for these new claims is found in the specification at page 6 and FIGS. 1-8, where bubbles generated using the Monson patent ("the Monson composition") are described and shown. Moreover, FIGS. 9-16 show bubbles generated using the claimed composition. All compositions were dispensed using the identical dispensing apparatus and identical included pressure. As noted in the specification at

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page 6, the recited figures support the conclusion that "a composition according to the present invention [as compared to that of Monson] dispensed at 85 psig results in a greatly increased number of bubbles and a smaller bubble size both throughout the exposure time [of the provided figure photographs]."

Based on support identified in the specification, applicants respectfully submit that no new matter has been introduced by way of the above-noted amendment.

OBVIOUSNESS REJECTION. Claims 1-24 stand rejected as allegedly obvious over U.S. Patent 5,902,225 ("Monson") in view of E.P. 170 269 ("EP"). In view of the amendments to claims 1 and 17, the only independent claims in the application, applicants respectfully traverse this rejection.

The cited art has been discussed in prior Office actions and responses thereto. Accordingly, general description regarding the references will not be repeated here.

The Office action acknowledges that the specification includes a comparative showing that demonstrates the described and depicted findings of more and larger bubbles in the claimed composition relative to that of Monson. Reference to Monson is included specifically in the instant specification. The Office action discounts those facts because "instant claims do not recite the bubbles or bubble sizes or the pressure employed to dispense the composition." *Id.* at 5. After entry of the current amendment, all pending claims require that the composition or shaving cream include bubbles upon dispensing.

Monson neither teaches nor suggests a composition that creates more and smaller bubbles than results surprisingly from the product taught by applicants. This surprising result was shown by applicants' comparative example, as set forth in the present specification at pages 6-7. Neither does Monson teach the inclusion of lactic acid in the intermediate constituent, or a CO₂-producing blend that occupies about 4.6% to about 7.4% by weight of the shaving cream, or a diluent that is about 8% to about 12% by weight of the composition.

The Monson product includes at least the following: "foamable utilitarian constituent," which includes the "active ingredients"; a "post-foaming agent"; and compressed gas that results in placing the product under pressure of about 10 to 60 psig. Monson, col. 5, l. 43 to col. 7, l. 13. The Monson product can also include a diluent, which is described as water, propylene glycol, glycerine, and mixtures thereof (Monson, col. 7, ll. 18-20). The diluent of the Monson product is

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alternatively defined in the Examples as including a "gas-producing substance", such as bicarbonate and citric acid. See Monson, col. 9, ll. 25-28. Monson's diluent, therefore, includes a blend as that term is used in the context of the present invention. Examples 3-9 of Monson (cols. 11-14) set forth various products, each of which includes a blend that was associated with a measured initial pressure, as follows:

Ex.	Sodium Bicarbonate (% of Diluent)	Citric Acid (% of Diluent)	Diluent (% of Product)	Blend (% of Product)	Initial Pressure (psig)
3	2.30	1.20	50	1.75	40
4	1.15	0.60	60	1.05	24
5	1.15	0.60	66	1.16	26
6	1.15	0.60	75	1.31	30
7	1.15	0.60	80	1.40	32
8	2.30	1.20	66	2.31	46
9	2.30	1.20	70	2.45	56

Monson discloses no other guidance regarding proportions of gas-producing substances composed of a bicarbonate and an acid in the product. Accordingly, the Monson product, as used in applicants' comparative example and depicted in FIGS. 1-8, includes a gas-producing substance, *i.e.*, a blend of bicarbonate and acid, which constitutes no more than 2.45% by weight of the product.

The Monson diluent is employed at a significantly greater proportion in its product than is applicants' diluent in its composition, *i.e.*, at 50% or greater versus no more than about 12%, respectively. Further, the percentage of the Monson product occupied by the blend that generates carbon dioxide is no greater than 2.45%, and results in an initial pressure that is no greater than 56 psig, as noted in the table above. In contrast, applicants' shaving cream includes more than about 4.6% blend and has an initial pressure of about 85 psig.

These differences are not merely optimizations of Monson's technology. Instead, applicants identified a composition and a shaving cream that differ from Monson's teachings by involving substantially less diluent or a greater amount of blend that resulted in surprisingly different effects, namely the greater number of smaller sized bubbles. The additional surface area

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encompassed by the smaller bubbles, let alone their greater number, adds significantly to the utility of the present invention. As noted by applicants:

In a skin preparation composition, especially in one used as a preparation for shaving, the size and numbers of bubbles produced are important factors for use as a lubricant and humectant. The smaller the bubbles, the more surface area is present to hold water to the skin of a user and thus easier it is [to] shave. ... [E]ven at the lesser pressure of 40 psig the current formulation results in a smaller bubble size throughout the time span.

Applicants' specification at 6. Monson cannot render applicants' described composition or shaving cream anticipated or obvious.

The EP reference fails to cure Monson's shortcomings as a Section 103 reference in this context. It discloses a medicated cosmetic but provides neither teaching nor suggestion of a composition or a shaving cream having about 8% to about 12% diluent, for example. As such, the EP reference cannot cure Monson's deficiencies.

Reconsideration and allowance of the foregoing claims, as amended, are respectfully requested.

Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees, which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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Page 9 of 9